

**WASHINGTON CITIZENS' COMMISSION ON
SALARIES FOR ELECTED OFFICIALS**

MINUTES

Regular Meeting
April 28, 2005
The Coast Hotel and Conference Center
Wenatchee

The meeting of the Washington Citizens' Commission on Salaries for Elected Officials was convened in Wenatchee and brought to order by Chair Byington on April 28, 2005 at 6:16 PM.

COMMISSION MEMBERS PRESENT

Mr. Baxter	Ms. Byington
Mr. Carlisle	Mr. Doman
Ms. Hanson	Ms. Hightower
Ms. Hornbeck	Mr. Hopkins
Mr. Ryan	Dr. Schwartz
Ms. Wicks	

COMMISSIONERS EXCUSED

Ms. Alyea	Mr. Boggs
Mr. Holzmeister	Mr. Irwin

Note: Mr. Boggs had contacted the office to request an excused absence prior to the meeting. At the time of the roll call, Ms. Sayer did not have that information.

STAFF PRESENT

Ms. Sayer

Vice Chair Hopkins read the *Opening Statement* into the record.

PUBLIC TESTIMONY

Vice Chair Hopkins read the *Procedures for Public Testimony* into the record. No members of the public were in attendance.

Present at the meeting and representing the Judiciary were:

- Judge John A. Schultheis, Division III Court of Appeals
- Judge Chip Small, Chelan County Superior Court
- Judge Alicia Nakata, Chelan County District Court
- Janet McLane, Administrator for the Administrative Office of the Courts.

The Judiciary was present to respond to questions but not to make a presentation.

WORK SESSION

Approval of Minutes

Motion by Mr. Carlisle to approve the minutes of the March 24, 2005 meeting; second by Ms. Hornbeck. The motion passed unanimously.
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2005-06 Proposed Salary Schedule

Chair Byington suggested a discussion about how commissioners are thinking with respect to the proposed salary schedule adopted at the January meeting and other issues such as the testimony of the Executive Branch officials about equity adjustments, the testimony by the Judiciary regarding use of the Federal judicial system as a benchmark, and legislative testimony and the issue of using EMS as a benchmark for those positions.

- Mr. Ryan stated that he wanted to bring his colleagues' attention to the news clipping regarding the Lieutenant Governor. He found it very interesting. He also directed commissioners' attention to the new economic charts that show the most current inflation data. He stated that in his opinion, this data is very important.
- In response to a question from Ms. Byington regarding the economic forecast, Mr. Ryan stated that his observation was that there was no material difference from the November 2004 forecast to the March 2005 forecast. The inflation rate is higher than the data the Commission had in January, but the differences are small. The forecast going forward is slightly higher; it was 1.8% when the proposed salary schedule was adopted in January. The March forecast is for 2.0%.
- Mr. Carlisle suggested a procedure whereby commissioners discuss the Executive Branch positions, then the Legislature, and the Judiciary last. His recommendation was to hold the 1.5% increase for both 2005 and 2006. He noted that state employees had not received increases since 2001 and the elected officials had received COLAs. He sees no reason for a market rate adjustment for any of the Executive Branch positions.
- Mr. Doman stated that he missed the March meeting but had reviewed the minutes regarding the Attorney General's presentation and asked for a discussion regarding where the position currently is and where it should be.
- Mr. Carlisle responded that the Attorney General had suggested using the position of Supreme Court Justice as a benchmark for his position. Mr. Carlisle noted there were differences between the responsibilities of the Supreme Court Justices and the Attorney General even though the Attorney General has a larger administrative role. He believes that a 5% differential is fair and suggested the position of Appellate Court Judge be used as the benchmark.
- Mr. Doman stated that Mr. Carlisle's view was appropriate and that he could see the Appellate Judge position as the benchmark.
- Mr. Carlisle stated that private attorneys receive higher salaries than the Attorney General. He looked at it in the governmental context of where the position is in respect to other elected positions.
- Mr. Doman stated that it appeared to him from reading the minutes that the Attorney General's presentation was good.
- Ms. Byington stated that the Attorney General spoke regarding the attorneys in his office and the upcoming attorney salary survey. The Attorney General's salary is the highest. In some other offices, staff salaries are higher than the elected official. She stated that it was unfortunate that the attorney salary study was not available for this Commission but that the 2007 Commission would have that information.
- Ms. Hornbeck stated that she wants to set salaries at a level to attract the best and brightest. Salaries for the appointed agency heads are increasing considerably.
- Mr. Hopkins noted that the salaries of the Executive Branch elected officials seem to be orderly and appropriate. Changing one or more individual salaries this year might disrupt the orderliness of the current salary structure for the Executive Branch officials. He mentioned the Attorney General's testimony and the need to study the salary of his staff. He stated that the Supreme Court Justice was an appropriate benchmark. He asked for clarification of Mr. Randow's testimony at the March meeting with respect to the temporary increase for state employees.
- Ms. Byington responded that Mr. Randow was referring to the 1.6% increase approved for July 1, 2006. Unless the 2007 Legislature continues the increase, the 1.6% will be rescinded effective July 1, 2007.

- Ms. Sayer noted that the state employee raises for 2005 and 2006 for represented state employees were negotiated between the unions and the Governor's office.
- Mr. Hopkins stated that his understanding was that the 3.2% increase for 2005 will become part of the permanent base pay and the 1.6% for 2006 will not.
- Mr. Ryan inquired whether the 2.9% approved for 2006 for Teamsters' Union employees would also be rescinded unless reapproved by the 2007 Legislature.
- Ms. Sayer responded that she would get that information to the commissioners.

Note: The 2.9% increase in the second year for the Teamsters would also be rescinded unless reapproved by the Legislature.
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Chair Byington stated that if there were no other thoughts about the Executive Branch positions the next part of the discussion would be about the judicial positions.

- Mr. Ryan stated that considering the potential for inversion in the Attorney General's office, he may propose an increase at the May meeting for that position but that he didn't have anything specific in mind at this time.
- Ms. Hornbeck inquired whether there were any historical notes regarding use of the position of Supreme Court Justice as a benchmark for the Attorney General.
- Ms. Sayer responded yes. She explained that the 1999 Commission had made a significant market adjustment to the Attorney General's salary and for 1999 and 2000 it benchmarked the salary to that of Supreme Court Justice. The 2001 Commission heard testimony from the Judiciary regarding good judges leaving the bench for private mediation/arbitration firms and wanted to send a message that the work of judges was valued. That message was in the form of a \$5,000 adjustment to the base salary for the four levels of judges. That result of that action was that the Supreme Court Justices' salary was and still is roughly \$5,000 higher.
- Ms. Byington stated that with respect to the Judicial Branch, the Commission heard varying thoughts on whether the judges are satisfied with the original proposal and moving toward using the Federal judges' positions as a benchmark. The Commission will make its decision in less than 30 days.
- Mr. Carlisle referred commissioners to an article he had received from Appellate Court Judge Robin Hunt regarding judicial salaries in New York. He noted that Washington is lucky to have the system it does. In New York, the judicial salaries are tied to legislator salaries and the proposal described in the news article is to tie them to the Federal bench. His feeling has not been changed by the "brain drain" testimony and he supports doing the same for the judges as is proposed for legislators; an additional 1.5% in each year. He concluded that the judges had made a good case for doing that.
- Mr. Hopkins stated that he is moving in that direction as well. It won't do much to get them to the Federal bench but he can't support a big jump to get there in one year. He supports an additional adjustment for the judges.
- Mr. Doman also supported 1% each year plus the 1.5% COLA in both years.
- Ms. Hornbeck stated that her initial comments made in earlier meetings were based on not knowing whether the Federal structure was considered within the state. Feedback from Mr. Randow indicated that they do look at Federal salaries.

- Mr. Ryan thanked Mr. Carlisle for bringing the New York judicial salaries' news clipping to the Commission's attention. He agreed that Washington state judges were fortunate to have the Commission setting their salaries. He stated that Mr. Carlisle had made a good point about judicial salaries and not falling behind. Testimony by the Attorney General was that the salaries of their attorneys was too low. Mr. McKenna quoted dollar amounts for major firms. He doesn't find that data comparable with public attorneys but it is a factor in his mind. Mr. Ryan noted that the elected officials had received a total increase of 3% over three years. An additional 1% per year for the judiciary just keeps them above the inflation rate. His thinking is that is another factor for the extra percentage.

Chair Byington stated that it would be helpful to have the thinking of this Commission clear as it relates to future commissions trying to deal with this question because it will come up year after year. It has been helpful to have staggered and overlapping memberships. In prior years it was possible to have an entire change of members on the Commission. It is also important for the Commission to think carefully about these matters so that it will be documented in the historical record. It will be useful for future commissions even though they can choose to disagree and go in a totally different direction. She noted that she was making these comments now because she can't be at the May meeting due to out-of-town business.

- Ms. Wicks referred to the email contact list in each commissioner's folder and inquired about the possibility of making flat rate adjustments in lieu of percentage adjustments.
- Ms. Byington stated that as Mr. Ryan would recall, past commissions have discussed flat rate versus percentage adjustments. She noted that flat dollar adjustments bring salaries closer together but you run the risk of underpaying some, as compared to comparative data, or over paying others.
- Ms. Wicks asked about making a COLA and a flat rate adjustment instead of all percentage increases.
- Mr. Ryan stated that percentage increases work well when the intent is to stay even with inflation and that flat dollar amounts make sense when making equity adjustments. He related back to Mr. Owen's report, stating that those recommendations are generally for dollar adjustments rather than percentage adjustments. The Commission has done that in the past.
- Mr. Hopkins stated that with respect to the Executive Branch and Legislature, flat amounts would be ok but the Judiciary has asked that the differential remain the same and you can't do that by granting a flat amount.
- Mr. Doman noted that if there is a need is to do equity adjustments, the Commission has information from the Willis review and comparison data that shows how the positions relate to each other. Once the Commission is comfortable with that, his sense of this year's activity is that a comfort level has been reached and that commissioners have a comparable set of positions and understand how they relate to each other. Mr. Owen gave a visual demonstration and Mr. Doman believes there is parity. Any adjustment made that is not a percentage puts that in jeopardy. To the extent that commissioners do not think there is parity, a dollar amount adjustment works. If we are where we want to be, we need to deal with a percentage.
- Ms. Hornbeck stated that was what was done in the last session of the Commission. Several equity adjustments were made based on an objective evaluation of the responsibility of the positions being considered. If the positions are roughly the same they should be in the same category. Another instance where a market adjustment could be made is when it is clear that the best people for the positions are not available without paying more because of market changes. A flat amount adjustment could be made for that. She is comfortable with that kind of decision.

At the request of Mr. Carlisle, Chair Byington asked the members of the Judiciary to introduce themselves.

Representing the Judiciary were:

- Judge Alicia Nakata, Chelan County District Court and President-elect of the District and Municipal Court Judges' Association
 - Judge John A. Schultheis, Division III Court of Appeals
 - Judge Chip Small, Chelan County Superior Court and Member of the Board of Trustees of the Superior Court Judges' Association
 - Janet McLane, Administrator, Administrative Office of the Courts
- Mr. Doman stated that he was interested in the judges' perception of the relationship between their salary and the salary of their colleagues. He asked what counsel they would have for the Commission as it considers judicial salaries.
 - Judge Small stated that he agreed that the judges were fortunate to have the Salary Commission. He is distressed to see colleagues leaving the bench for private firms and he urged the Commission to use the Federal judicial positions as the benchmark. He noted that Chelan County has utilized the services of Fred Owen on and off for many years. He stated that Federal district court judges don't touch the lives of families and people the way that state superior court judges do. He stated that it is not a stretch to achieve parity with the federal bench over time.
- Mr. Ryan stated that one of the influencing factors from his years on the Commission has been that in the overall scheme of things, the total dollars the Commission has spent on salaries relative to the size of the state budget is nothing. He doesn't want to be cavalier but it is a fact. The situation with the judges is a bit different because there are more people in that group. He inquired about budgets in the smaller counties, asking do not dollars become proportionately larger and how does the county budget for the increases the Commission grants.
 - Judge Small responded that the county tries to anticipate or estimate what the Salary Commission might do. He noted that it isn't much different in King County, even though there are more judges, and it is a significant amount for any county large or small. He is paid half by the state and half by the county. He finds that to be good, especially in his position as a superior court judge because he is enforcing state law enacted by the Legislature but at the same time he is applying it to folks locally in Chelan County. He stated that it was unfortunate that the legislation to pay district court judges 50 percent by the state and 50 percent by the county didn't pass.
- Mr. Ryan inquired whether the district court judges are currently financed totally by the county.
 - Judge Nakata responded that unlike the superior court judges whose salaries are split between the state and the county, the district court salaries are entirely borne by county government and come out of the county's general fund. She also expressed appreciation for Mr. Hopkin's comment to keep the 5% differential. She referred to the chart commissioners had received showing salaries of the Federal bench. She recommended a COLA increase and an adjustment to begin to bring salaries in line with the Federal bench.
- Mr. Doman raised the issue of the judicial differential. He asked whether Judge Nakata saw a difference in the demands of the positions and if district court salaries should be brought up closer to superior court judges. He doesn't see much difference in responsibility.
 - Judge Nakata responded that they refer cases from district court to superior court and from the appellate courts to the Supreme Court. The system of 5% is appropriate and works well. Judges enter the system at all levels and for their own reasons.
- Mr. Doman inquired whether it creates career paths.

- Judge Nakata responded that there are judges that start at district court and some start higher. It is difficult to identify a norm.
- Ms. Hornbeck asked whether the Commission has ever discussed the subject of an in-grade progression system for elected positions including the judges.
- Ms. Byington responded that she didn't know about "ever" but it has not come up in the years she has been on the Commission. She further elaborated that the Commission would need advice from the Attorney General in terms of how the law is written whether a step progression system would be within the Commission's authority.
- Mr. Doman asked whether Ms. Hornbeck meant to give credit for years of service.
- Ms. Hornbeck stated that she meant credit for years of looking at a variety of issues, learning from them, and being able to deal with much more complex cases successfully more than someone new to the position. She noted that Jefferson County had implemented a program reflecting length of service for its elected officials.
- Ms. Byington asked Ms. Sayer if, in the research she has done, she has observed a salary range with steps for elected officials in other states. Her impression for the most part is that they are paid a flat rate.
- Ms. Sayer stated that to the best of her knowledge from reviewing old minutes, prior commissions had not considered step increases for elected officials and she wasn't familiar with other states' practices but doesn't think they have step increases. She noted that all of the other legislatures' salaries are flat dollar amounts.
- Ms. Byington stated that it is a bit of a conundrum. If an individual is elected to a term of office of four years or whatever the case would be, there wouldn't be movement during that period except as provided for by statute such as the Commission does. It is an interesting question.

Chair Byington asked for other thoughts or comments about the Judicial Branch before discussing the Legislative Branch. She explained the proposal on the table for legislators. The Commission proposes to grant a 1.5% COLA for 2005 and 2006 and to grant an additional 1% on top of the 1.5% for both years which would be the equivalent of 5% over the biennium only it is slightly more than 5% because of compounding. She asked for commissioners' comments on the proposal passed in January.

- Mr. Hopkins stated he is very comfortable with Mr. Randow's arguments at the March meeting and Mr. Owen's report about the relevant comparability of legislators with the EMS positions. Even though on the face of it, it seems like comparing apples and oranges. Mr. Randow, in particular, itemized his subjective analysis in a way that was very compelling. But he doesn't find the EMS salary schedule very useful as a tool to decide what the legislative salaries ought to be because it is designed to be a very flexible system. Legislators all make the same salary but they don't all have exactly the same responsibilities that would lead an HR person to plug them into some particular point on the EMS salary schedule. He is still waffling on whether the legislators ought to get more than whatever COLA is agreed upon. He does not like the idea of using the EMS as a benchmark because he doesn't know what it means. Mr. Hopkins concluded that he didn't find the EMS scale that helpful.
- Mr. Doman stated that it does give some comfort that we are in the ball park. That was an important result. He agreed with Mr. Hopkins that we need to be careful about going any further than that.
- Ms. Hornbeck found Mr. Randow's analysis interesting in that he has looked at the Executive Branch positions as well as the appointed positions. She noted that he would place legislators in Band 2 rather than Band 1. The Commission didn't really get into what his justification was. It does reinforce to her, as Commissioner Doman indicated, that we are in the neighborhood. Also, as Ms. Byington had indicated at one of the earlier meetings, it is very difficult to be right on at 1% or 2% but if you are

in the ballpark at 5% you probably have some valid information that you are being guided by. It is tough to find an exact match. She is comfortable with the proposal.

- Ms. Hightower referred to the pink chart at Tab 5, *A Comparison of Across-the-Board Salary Increases for Elected Officials, State Employees, and Teachers 1987 through 2006*. In 1995 and 1996, in response to Ms. Wicks' question regarding flat increases, legislators at that time were given a flat increase of \$1,200 per year. It has been done before and could be done again.
- Ms. Byington agreed that could be done. As Ms. Hornbeck said, when adjustments were made to line up various jobs, it has been done with a flat dollar increase. The Commission has said these jobs should all be at a particular rate and moved them to that rate. It was done for the Secretary of State and Insurance Commissioner in 2003.
- Ms. Wicks inquired about the reasoning behind the \$100 per month rather than a percentage increase.
- Ms. Byington responded that was probably done because, considering the salary of legislators at that time, the \$1,200 per year was a big percentage increase and it was easier to market in a flat dollar arena than it was to grant a large percentage increase.
- Ms. Sayer noted that was exactly what happened.
- Mr. Carlisle referred commissioners to the Everett Herald news clipping regarding the city's Salary Commission. He noted that the recommendation for the Everett municipal judge is to make the same salary as the district court judge. He also noted that Mayor of Everett makes more than all of the Executive Branch elected officials except the Governor and Attorney General.
- Ms. Byington noted that generally speaking, the salaries of the elected officials in Snohomish, King, and Pierce counties are higher than most of the Executive Branch elected officials.
- Mr. Hopkins stated that more discussion on the economic forecast is needed next month after Dr. Sohn's presentation. He believes the 1.5% may be too low. He also stated that he was surprised at the lack of public input this year, not only in testimony but in email and other contacts. It must be a sign of the times because in 2003 the Commission heard from a lot of state employees who were irate that increases for elected officials were being considered when they weren't getting one. That isn't the case this year and perhaps that explains the situation.
- Mr. Doman noted that the situation is different this year.
- Ms. Hornbeck stated that it is a reflection of the sense that people can deal with the issue of everyone not being paid enough, but when one group is being paid disproportionately it creates conflict. She stated that is one reason she is pleased the Commission tries very hard to achieve internal equity.
- Mr. Baxter noted that the Commission is not committed to the 1.5%. At the May meeting, the revised economic forecast should be considered.
- Ms. Byington reported that she would be out of the country on business and would miss the May meeting.

Vice Chair Hopkins thanked Chair Byington for her eight years of dedicated service on the Commission.

The meeting was adjourned at 7:40 PM